

1 KEVIN V. RYAN (CSBN 118321)
United States Attorney

2 CHARLES BEN BURCH (CSBN 79002)
Chief, Criminal Division

3 JEFFREY L. BORNSTEIN (CSBN 99358)
4 Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055
6 San Francisco, California 94102
Telephone: (415) 436-6873

7 Attorneys for Plaintiff

FILED

MAR 11 2003

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11
12 UNITED STATES OF AMERICA,)

13 Plaintiff,)

14 v.)

15 US MACHINERY dba USM Distributors,)

16 Defendant.)
17

No. CR-02-0319-CRB

PLEA AGREEMENT

18
19
20 Defendant US MACHINERY dba USM Distributors, a California corporation with its
21 principal place of business in South San Francisco, California, by and through its counsel of
22 record, as ratified by the Board of Directors, enters into this written plea agreement (the
23 "Agreement") pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal
24 Procedure:

25 The Defendant's Promises

26 1. US MACHINERY dba USM Distributors, a California corporation with its
27 principal place of business in South San Francisco, California, by and through its counsel of
28

1 record, as ratified by the Board of Directors, agrees to plead guilty to Counts One and Six of the
2 captioned Indictment charging it with mail fraud, in violation of 18 U.S.C. § 1341. US
3 Machinery agrees that the elements of the offense and the maximum penalties are as follows: (1)
4 defendant made up a scheme or plan to defraud or for obtaining money or property by making
5 false promises or statements, with the jury agreeing on at least one particular false promise or
6 statement that was made; (2) defendant knew that the promises or statements were false; (3) the
7 promises or statements were material, that is they would reasonably influence a person to part
8 with money or property; (4) defendant acted with intent to defraud; and (5) defendant used or
9 caused to be used, the mails to carry out or attempt to carry out an essential part of the scheme.

10 For each count:

- | | | | |
|----|----|-----------------------------------|-----------------------------|
| 11 | a. | Maximum Probationary sentence | 5 years |
| 12 | b. | Maximum fine | \$500,000 or twice the loss |
| 13 | c. | Maximum supervised release term | N/A |
| 14 | d. | Mandatory special assessment | \$400 |
| 15 | e. | Restitution | \$200,000 |
| 16 | f. | Debarment from federal contracts. | |

17 US Machinery understands that, because it is pleading guilty to more than one count, the
18 Court may order the sentences on those counts to run consecutively.

19 2. US Machinery agrees that it is guilty of the offenses to which it will plead guilty,
20 and agrees that the following facts are true:

21 a. US Machinery ("USM") also doing business as USM Distributors and US
22 Mach, was a distributor of computers and computer peripherals headquartered in Fremont,
23 California with offices in South San Francisco and Sunnyvale, California.

24 b. Beginning in 1996, Desmond McQuoid, an official from the San Francisco
25 Unified School District (School District), began to purchase computer parts and peripherals from
26 US Machinery on behalf of the School District. According to McQuoid, the School District
27
28

1 would not allow him to purchase more than \$500 in computer equipment and peripherals at any
2 one time without authorization from his superiors. McQuoid therefore instructed US Machinery
3 to create false invoices splitting the purchases into amounts less than \$500.

4 c. Beginning in 1996, McQuoid directed US Machinery to send purchase
5 order invoices through an alarm supply company that he said had an encumbrance with the
6 School District. Under the encumbrance, McQuoid said he could purchase thousands of dollars
7 in alarm equipment for the School District without obtaining any additional approvals from
8 McQuoid's superiors.

10 d. McQuoid ordered computers and peripherals directly from US Machinery.
11 The computers and peripherals were either picked up at a US Machinery location or shipped
12 directly to the School District. McQuoid instructed US Machinery to falsely describe the
13 equipment in its invoice using various names which made it appear the equipment was part of the
14 security systems supplied by the alarm supply company, when it was not. US Machinery would
15 then send the descriptions and prices to the alarm supply company, who would prepare its own
16 invoices using the false item descriptions provided by US Machinery and add a mark up of
17 approximately 25%. After preparing the invoices, the alarm supply company would send the
18 invoices to the School District for payment

21 e. Beginning in approximately 1998, US Machinery would directly bill the
22 School District for the computers and other equipment it supplied using the same and similar
23 false descriptions previously supplied to the alarm supply company.

25 f. Beginning in 1996 and continuing thereafter, MCQUOID periodically
26 asked US Machinery to provide him with goods and services, allegedly for the school district but
27 which turned out to be for McQuoid's personal benefit and for a side business McQuoid said he
28

1 was developing. These items included: food, DVDs, t-shirts, furniture, computer and camera
2 equipment, plane tickets to Hawaii and New Zealand and other locales, hotel accommodations,
3 beach house rentals and training courses.

4 g. MCQUOID directed US Machinery to include the costs of these items in
5 the invoices submitted to the School District. These items would be hidden in the invoices either
6 by using false names to describe the goods provided or else by inflating the price of goods
7 actually supplied or both. US Machinery kept separate records detailing these expenses which it
8 would periodically send to MCQUOID.
9

10 h. US Machinery admits that it used the mails to carry out and attempt to
11 carry out its scheme in that invoices and checks were sent by mail to and from US Machinery, the
12 alarm supply company and the School District.
13

14 i. US Machinery bid to supply computer servers as part of an E-Rate
15 application submitted by and on behalf of the San Francisco Unified School District. US
16 Machinery learned during the process that some of the contractors had submitted inflated bids to
17 the School District and to the USAC and SLD. US Machinery brought this fact to McQuoid's
18 attention. Rather than correcting the misstatements in the bid documents, McQuoid arranged a
19 meeting with the principal contractor near the San Francisco Airport and tried to obtain a
20 concession from the contractor to purchase computers from US Machine. The contractor was
21 then supposed to donate these computers to the School District. The E-Rate contract was later
22 cancelled by the new School District superintendent before any of the USAC/SLD funds were
23 expended.
24

25
26 j. US Machinery stipulates that the readily provable loss caused by its
27 fraudulent conduct is \$200,000.
28

1 3. US Machinery agrees to give up all rights that it would have if it chose to proceed
2 to trial, including the rights to a jury trial with the assistance of an attorney; to confront and
3 cross-examine government witnesses; to remain silent or testify; to move to suppress evidence or
4 raise any other Fourth or Fifth Amendment claims; to any further discovery from the
5 government; and to pursue any affirmative defenses and present evidence.

6 4. US Machinery agrees to give up its right to appeal this conviction, the judgment,
7 and orders of the Court. US Machinery also agrees to waive any right it may have to appeal its
8 sentence except that it reserves its right to appeal if it is sentenced to more than the applicable
9 guideline fine range set forth in this agreement. US Machinery waives any right it may have to
10 assert the attorney-client privilege by declining to answer any questions asked of any of its
11 principals at any trial or hearing by a pro se defendant or counsel for any other defendant in any
12 case or matter in which it is cooperating with the government pursuant to this agreement. See
13 United States v. Henke, 222 F.3d 633 (9th Cir. 2000) (counsel for any defendant who has joined a
14 joint defense agreement may owe duty of loyalty to all defendants participating in the joint
15 defense agreement). Furthermore, US Machinery waives any right it may have to assert its right
16 to conflict-free representation by any attorney or pro se defendant where a conflict arises from
17 that attorney's or defendant's participation in a joint defense agreement in which it also was a
18 party.

19 5. US Machinery agrees not to file any collateral attack on its conviction or
20 sentence, including a petition under 28 U.S.C. §2255, at any time in the future after it is
21 sentenced, except for a claim that its constitutional right to the effective assistance of counsel
22 was violated.

23 6. US Machinery agrees not to ask the Court to withdraw its guilty plea at any
24
25
26
27
28

1 time after it is entered. US Machinery agrees that, regardless of any other provision in this
2 agreement, the government may and will provide to the Court and the Probation Office all
3 information relevant to the charged offenses or the sentencing decision. The government may
4 also provide information about the defendant's conduct and this plea to other federal, state and
5 local governmental agencies. In return for the government's promises set out below, US
6 Machinery agrees to pay restitution in the amount of \$200,000 for all the losses caused by all the
7 schemes or offenses with which it was charged in this case, and it agrees that the amount of
8 restitution will not be limited to the loss attributable to the count(s) to which it is pleading guilty,
9 pursuant to 18 U.S.C. § 3663(a)(3). Before or after sentencing, US Machinery will, upon request
10 of the Court, the government, or the U.S. Probation Office, provide accurate and complete
11 financial information, submit sworn statements and give depositions under oath concerning its
12 assets and its ability to pay, surrender assets it obtained as a result of its crimes, and release funds
13 and property under its control in order to pay any fine, forfeiture, or restitution. US Machinery
14 understands and agrees that if for any reason it materially violates any part of this Plea
15 Agreement, US Machinery and its principals may thereafter be prosecuted for any criminal
16 violation of which the government has knowledge, notwithstanding the expiration of any
17 applicable statute of limitations following the signing of this Agreement. US Machinery and its
18 principals agree that neither it nor they will raise the expiration of any statute of limitations as a
19 defense to any such prosecution and US Machinery understands and agrees to this tolling of the
20 statute of limitations and all of the other terms and conditions of this Agreement.

21
22
23
24
25 7. US Machinery agrees that the Sentencing Guidelines should be calculated as
26 follows, and that it will not ask for any other adjustments to or reductions of or downward
27 departures from the offense level:
28

1 \$200,000 to the San Francisco Unified School District as restitution in this criminal case. US
2 Machinery acknowledges that the restitution amount in this Agreement is for purposes of this
3 criminal action only and that it may need to pay additional amounts to the City and County of
4 San Francisco and/or the San Francisco Unified School District including but not limited to
5 additional restitution, damages, civil penalties and attorneys fees.

6 9. US Machinery agrees to pay criminal fines totaling \$150,000 and mandatory
7 special assessments totaling \$800 (\$400 on each count). The parties stipulate that the fine
8 amount agreed to herein, which is less than the statutory maximum, is appropriate under the
9 provisions of 18 U.S.C. §§ 3553, 3571 and 3572.

10 10. US Machinery agrees to cooperate with the U.S. Attorney's Office before and
11 after sentencing. This cooperation will include, but will not be limited to US Machinery and its
12 principals doing the following:

- 13 a. Responding truthfully and completely to any and all questions, whether in
14 interviews, before a grand jury or at any trial or other proceeding;
- 15 b. Providing all documents and other material asked for by the government; and
- 16 c. Testifying truthfully at any grand jury, court or other proceeding as requested
17 by the government.

18 11. US Machinery and the United States agree to recommend the following
19 sentence to the Court:

20 a. US Machinery should be placed on probation for a period of 3 years on
21 conditions including that US Machinery:

- 22 i. commit no violations of United States or local law;
- 23 ii. institute internal procedures involving oversight and reports to
24 responsible company officials to prevent inadvertent and/or
25
26
27
28

1 deliberate attempts to defraud public entities and others or to
2 evade billing requirements and other standards set by any
3 public entities.

4 b. On the date this Plea Agreement is accepted and sentence is imposed,
5 US Machinery agrees to pay at least \$150,000 as partial payment of its restitution obligation and
6 the \$800 in mandatory special assessments that will be imposed by the Court. US Machinery
7 understands that it will be jointly and severally liable for the remainder of its restitution
8 obligation with Desmond McQuoid. It will pay any remaining restitution balance and the
9 criminal fine within 120 days after judgment and sentence is imposed. On the date of sentencing,
10 US Machinery will provide satisfactory security to the United States for all of its obligations in
11 the form of real property, promissory notes and personal guarantees as the United States
12 reasonably deems to be necessary.

13
14
15 12. US Machinery and its principals agree not to commit or attempt to commit any
16 crimes before sentence is imposed. US Machinery and its principals agree not to intentionally
17 provide false information to the Court, the Probation Office, Pretrial Services, or the government;
18 or fail to comply with any of the other promises it has made in this Agreement. US Machinery
19 and its principals agree that, if either it or they fail to comply in any material way with any
20 promises made in this Agreement, then the government may petition the Court to be released
21 from all of its promises below, but US Machinery will not be released from its guilty plea.

22
23
24 13. US Machinery and its principals agree that this Agreement binds the United
25 States Attorney's Office for the Northern District of California only, but does not bind any state
26 or local agency.

27 14. If this Plea Agreement is accepted by the Court, US Machinery waives the
28

1 right to preparation of a presentence report. If acceptable to the Court, both parties agree to
2 waive presentence investigation and report pursuant to Rule 32(C)(i) of the Federal Rules of
3 Criminal Procedure, and ask that US Machinery be sentenced at the time the guilty pleas are
4 entered. Before or after sentencing, US Machinery will, upon request of the Court, the
5 government, or the US Probation Office, provide accurate and complete financial information,
6 submit sworn statements and give depositions under oath concerning its assets and its ability to
7 pay, surrender assets it obtained as a result of my crimes, and release funds and property under its
8 control in order to pay any fine, forfeiture, or restitution.
9

10 15. US Machinery agrees that this Agreement contains all of the promises and
11 agreements made with the government, and US Machinery will not claim otherwise in the future.
12 No modifications of, or additions to, this Agreement shall be valid unless they are in writing and
13 signed by the United States, US Machinery's attorney, and a duly authorized representative of US
14 Machinery.
15

16 The Government's Promises

17 16. The government agrees to move to dismiss any open charges pending against
18 the defendant in the captioned indictment at the time of sentencing.
19

20 17. The government agrees not to file or seek any additional charges against the
21 defendant, its principals or employees that could be filed as a result of the investigation that led
22 to the captioned indictment.
23

24 18. The government agrees to recommend the Guidelines calculations and
25 sentence set out above.
26

27 //
28

The Defendant's Affirmations

1
2 19. US Machinery confirms that it has had adequate time to discuss this case, the
3 evidence, and this Agreement with its attorneys, and that they have provided US Machinery with
4 all the legal advice that it requested.

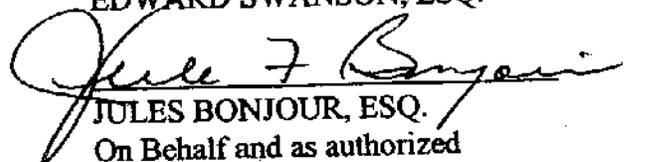
5 20. US Machinery confirms that its decision to enter a guilty plea is made
6 knowing the charges that may have been brought against it, any possible defenses, and the
7 benefits and possible detriments of proceeding to trial. US Machinery also confirms that its
8 decision to plead guilty is made voluntarily, and no one coerced or threatened it to enter into this
9 Agreement.
10

11 21. This Agreement has been authorized, following consultation with counsel, by
12 the Board of Directors of US Machinery, by corporate resolution dated March 10, 2003. A
13 certified copy of the corporate resolution is attached as Exhibit A to this Agreement and is
14 incorporated herein.
15

16 22. The principals of US Machinery have also agreed to personally guarantee the
17 financial obligations of US Machinery and will also personally agree to cooperate with the
18 government as set forth in the attached Addendum to Plea Agreement which is incorporated by
19 reference herein.
20

21
22 DATED: March 6, 2003

23
24 
EDWARD SWANSON, ESQ.

25
26 
JULES BONJOUR, ESQ.
On Behalf and as authorized
27 by the Board of Directors of
US MACHINERY dba USM Distributors
28 DEFENDANT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Defense Counsel Affirmation

We have fully explained to our clients all the rights that a criminal defendant has and all the terms of this Agreement. In our opinion, our clients understand all the terms of this Agreement including the waiver of the statute of limitations by the individuals and all the rights the company is giving up by pleading guilty, and, based on the information now known to us, the company's decision to plead guilty is knowing and voluntary.

DATED: March 6, 2003

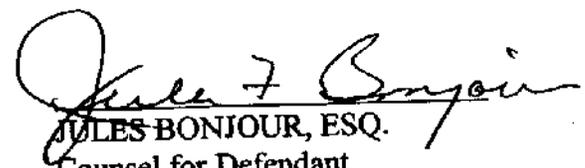
LAW OFFICES OF SWANSON
AND MCNAMARA



EDWARD SWANSON, ESQ.
Counsel for Defendant
US MACHINERY

DATED: March 6, 2003

LAW OFFICES OF JULES BONJOUR



JULES BONJOUR, ESQ.
Counsel for Defendant
US MACH DISTRIBUTORS

United States' Signature

DATED: March ¹¹ 2003

KEVIN V. RYAN
United States Attorney



JEFFREY L. BORNSTEIN
Assistant United States Attorney

ADDENDUM TO PLEA AGREEMENT

The following addendum is incorporated by reference into the attached plea agreement.

1. US Machinery agrees to implement forthwith the attached the corporate resolution regarding oversight of future contracts with governmental agencies. The attachment is marked exhibit A.

2. US Machinery's directors Ramon Catbagan and Danillo Catbagan agree that in the event there is a material breach of the attached plea agreement by US Machinery that they as principals of said corporation may thereafter be prosecuted for any criminal violations of which the government has knowledge. They further agree that they will not raise as a defense to any such prosecution the expiration of any statute of limitations and that by signing this addendum any applicable statute of limitations is tolled.

3. US Machinery's directors Ramon Catbagan and Danillo Catbagan agree to be both jointly, severally and personally liable for restitution in the amount of \$200,000 to the San Francisco Unified School District as determined in paragraph 2(j) of the attached plea agreement should US Machinery not satisfy that obligation in full and further they agree to be jointly, severally and personally liable for the fine in the amount of \$150,000 as determined in paragraph 7(h) of the attached plea agreement should US Machinery not pay the fine in full. US Machinery's directors Ramon Catbagan and Danillo Catbagan agree to be jointly, severally and personally liable for the \$800 penalty assessment referred to in paragraph 9 of the attached plea agreement should US Machinery not pay the assessment in full.

4. US Machinery's directors Ramon Cathagan and Danilo Cathagan agree to cooperate with the US Attorney's office before and after the sentencing of US Machinery in its prosecution of related matters. Said cooperation shall include but not be limited to the terms set forth in paragraph 10 of the attached plea agreement.

Date: 3/10/03



Ramon Cathagan

Date: 3.10.03



Danillo Cathagan

**US MACHINERY
MINUTES OF MEETING OF BOARD OF DIRECTORS
AND
RESOLUTIONS OF BOARD OF DIRECTORS**

March 10, 2003

A meeting of the Directors of US MACHINERY, a California Corporation, was held on March 10, 2003 at 5:00 p.m. at 24301 Southland Drive, Suite 312, Hayward, CA 94545 pursuant to consent and waiver of notice thereof signed by all of the directors of the corporation and filed with the minutes of this meeting.

Danillo Catbagan presented to the meeting two proposed resolutions regarding the prospective implementation of contracts between the corporation and its governmental customers. Thereupon, on motion duly made and seconded, the following resolutions were unanimously adopted [and are to be effective immediately]:

RESOLVED, that All contracts between US MACHINERY and any governmental agency shall be reviewed by Danillo Catbagan prior to and after their implementation to assure that all materials contracted for have been properly delivered and that the representative of the contracting governmental agency has the authority to enter into such contracts.

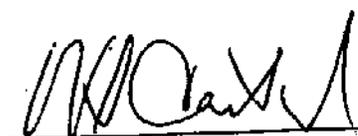
RESOLVED, that Danillo Catbagan shall review all billings to ensure that they are accurate and represent the fair market value of the goods delivered. If the contracts involve any subcontractors who will be participating in the receipt of profits under the contract, the existence of said subcontractors, their identities and the extent of their participation in the contract shall be revealed to the governmental agency at the time the contract is being entered into.

Danillo Catbagan then presented to the meeting a proposed resolution regarding the entry of a plea to Indictment CR-02-0319-CRB. Thereupon, on motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED, that the Board of Directors of US Machinery hereby authorizes its attorneys JULES BONJOUR and EDWARD SWANSON to enter pleas of guilty to Counts One and Six of the Indictment CR-02-0319-CRB charging violations of Title 18 United States Code Section 1341, Mail Fraud.

IT IS FURTHER RESOLVED that the corporation has been fully informed of the nature of the charges and possible defenses by its attorneys and has reviewed the plea agreement that serves as the basis of this pleas and fully understands the contents of said agreement.

EXECUTED THIS 10th DAY OF MARCH, 2003:



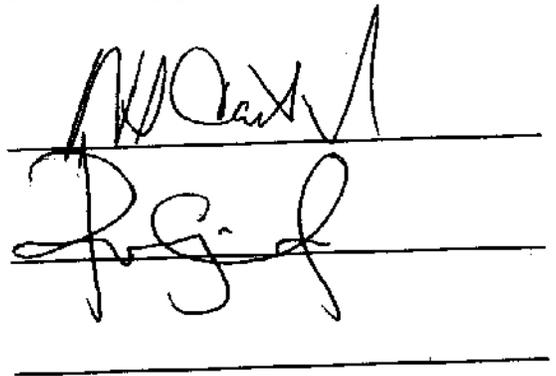
DANILLO CATBAGAN, CEO and
President of the Board of Directors

US MACHINERY

**WAIVER OF NOTICE AND CONSENT TO
HOLDING OF MEETING OF BOARD OF DIRECTORS**

We, the undersigned, being all of the directors of US MACHINERY, a California Corporation, do hereby waive notice of the time, place, and purposes of a meeting of the Board of Directors of this corporation; do hereby fix the 10th day of March, 2003 at 5:00 p.m. at 24301 Southland Drive, Suite 312, Hayward, CA 94545 and consent to the holding of this meeting at that time and place; do hereby consent to the transaction of any and all business that may come before the meeting, including but not limited to the adoption of certain resolutions relating to Indictment CR-02-0319-CRB, and any other action that may be necessary or appropriate; do hereby waive all requirements of the laws of the State of California with respect to notice of the meeting and do further agree that any business transacted at the meeting shall be as valid and legal and of the same force and effect as though the meeting were held after notice duly given.

Dated: March 10, 2003



Two handwritten signatures are present, each written over a horizontal line. The top signature is in dark ink and appears to be 'M. Cant'. The bottom signature is in black ink and appears to be 'R. G. J.'. There is a third horizontal line below the second signature.